

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): SADOT, Emek	Conf. No.: 2558
Application No.: 10/072,364	Art Unit: 2194
Filed: February 6, 2002	Examiner: ANYA, Charles
Title: CLIENT-CONTROLLED LOAD BALANCER	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT IN SUPPORT OF REQUEST FOR PRE-APPEAL BRIEF REVIEW

Sir:

This is the third Notice of Appeal to be filed in the above-captioned patent application. Prosecution has twice been reopened after the filing of Appeal Briefs. If the decision of the reviewing panel is to send this matter to the BPAI, the individual claim rejections will be addressed in a further appeal brief. However, it is respectfully submitted that none of the rejections under 35 U.S.C. 103(a) presented in the January 5, 2010, Office Action satisfy the requirements of MPEP 706.02(j) and that none of these rejections constitute prima facie showings of obviousness. It is therefore respectfully requested that all outstanding rejections be withdrawn and that an Office Action be issued that presents prima facie rejections that are suitable for review by the BPAI, or, alternately, that all claims be allowed.

MPEP 706.02(j) requires that, in order to support a rejection under 35 U.S.C. 103(a), an examiner must explain what limitation of a claim is not satisfied by a primary

reference and then identify “the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter....” Each rejection under 35 U.S.C. 103(a) in the above-referenced Office Action indicates that a primary reference fails to satisfy a certain claim limitation and that it would have been obvious to modify the primary reference “with the teachings of” a secondary reference. For example, the rejection of claim 1 indicates that it would have been obvious “to modify the system of Brendel with the teaching of Joffe.” No further explanation as to how the primary reference should be modified is provided.

Stating that some unspecified modification to the primary reference should be made does not constitute an explanation as to how the primary reference should be modified to arrive at the claimed subject matter. In the present case, the examiner attempts to modify Brendel’s system with teachings from various conventional load balancing systems. However, Brendel specifically provides that his system “...cannot perform traditional load balancing without knowledge of the loads of each server at the server farm, or knowledge of the requests from other clients.” Brendel acknowledges this shortcoming of his system and does not propose any way to address it. Asserting that Brendel’s system should be modified in some unspecified manner using conventional art does not constitute an explanation as to how to make Brendel’s system perform the methods of the pending claims.

In the “Response to Arguments” section of the final Office Action, the examiner quotes MPEP 706.02(j) five separate times and insists that the requirements of this section have been satisfied. Language from the secondary references is also quoted. However, an explanation as to how the primary references should be modified is still not

provided. It is respectfully submitted that a prima facie case of obviousness has not been presented in connection with any claim, and all claims are submitted to be allowable over the art of record for at least this reason. Wherefore, reconsideration and allowance of all claims is earnestly solicited.

Respectfully submitted,

/Scott T Wakeman #37750/

Scott L. Lowe

Registration No. 41,458

Scott T. Wakeman

Registration No. 37,750

PO BOX 1364
Fairfax, VA 22038-1364
1.703.621.7140

Date: April 2, 2010